



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of PacifiCorp  
(U 901-E) For an Order Authorizing a  
General Rate Increase and Implementation of  
an Energy Cost Adjustment Clause and a Post  
Test-Year Adjustment Mechanism.

Application 05-11-022

Order Instituting Investigation of the  
Commission's Own Motion into the Rates,  
Operations, Practices, Service and Facilities  
of PacifiCorp

Investigation 06-02-002

**OPENING BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES  
ON THE RATE CREDIT REQUEST IN PACIFICORP'S GENERAL RATE  
CASE OF THE KLAMATH WATER USERS ASSOCIATION AND  
THE UNITED STATES BUREAU OF RECLAMATION AND UNITED  
STATES FISH AND WILDLIFE SERVICES**

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## **TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION AND SUMMARY OF RECOMMENDATIONS .....</b>	<b>1</b>
<b>II.</b>	<b>BACKGROUND .....</b>	<b>2</b>
	A. THE COMMISSION ADOPTED A TRANSITION RATE FOR KLAMATH CUSTOMERS IN D.06-04-034. ....	2
	B. IF APPROVED, TWO JOINTLY-PROPOSED SETTLEMENTS WOULD RESOLVE PACIFICORP’S REQUESTED REVENUE REQUIREMENT, AS WELL AS MOST COST ALLOCATION AND RATE DESIGN ISSUES. ....	4
	C. THE KLAMATH CUSTOMERS’ REQUEST FOR A RATE CREDIT IS THE ONLY REMAINING ISSUE. ....	5
<b>III.</b>	<b>DISCUSSION .....</b>	<b>5</b>
	A. LEGAL STANDARD .....	5
	B. THE KLAMATH CUSTOMERS HAVE NOT ESTABLISHED THE EXISTENCE OF A BENEFIT THAT JUSTIFIES A RATE CREDIT. ....	6
	1. Rate credit request .....	6
	2. KWUA’s hydrological analysis is defective .....	7
	a) Flaws in the KWUA methodology .....	8
	(1) The KWUA methodology fails to recognize decreases in flow resulting from their activities.....	8
	(2) KWUA uses the wrong baseline. ....	10
	(3) The Klamath Customers’ methodology incorrectly compensates for the fact they are not the only source of return flows. ....	11
	3. The Klamath Customers have no “right” to water they return to the river. ....	11
	4. KWUA overestimates the power that could be produced, even assuming that 261,100 acre-feet of water was available for generation. ....	13
	5. KWUA’s pricing of the purported incremental generation is unsupported and inconsistent with cost-of-service principles.....	14
	C. PROVIDING WATER TO THE LOWER KLAMATH NATIONAL WILDLIFE REFUGE IS NOT A BENEFIT THAT PACIFICORP’S OTHER RATEPAYERS SHOULD SUBSIDIZE. ....	15
	D. THE KLAMATH CUSTOMERS PROVIDED NO EVIDENCE THAT PACIFICORP’S COST TO SERVE THEM IS LOWER THAN THE COST OF SERVING OTHER IRRIGATION OR PUMPING CUSTOMERS. ....	16

E. THE KLAMATH CUSTOMERS’ REQUESTED RATE CREDIT FOR RETURNING WATER TO THE RIVER IS UNPRECEDENTED. ....	16
F. IF THE COMMISSION DECIDES THERE IS A BENEFIT, IT SHOULD CAP THE RESPONSIBILITY OF CALIFORNIA RATEPAYERS AT FIVE PERCENT. ....	18
<b>IV. CONCLUSION .....</b>	<b>18</b>
CERTIFICATE OF SERVICE	

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**I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS**

The United States Bureau of Reclamation and United States Fish and Wildlife Services (collectively, the Bureau) and the Klamath Water Users Association (KWUA) request in testimony that the California Public Utilities Commission (Commission) adopt a rate credit that would result in lower electric rates for them. The basis for this request is the purported right of KWUA and the Bureau (collectively, Klamath Customers) for compensation for returning water to the Klamath River, which PacifiCorp then uses to generate electricity. The Commission should deny this request.

The Klamath Customers fail to quantify accurately the amount of water they return or establish that it provides operational benefits to PacifiCorp. More fundamentally, they

have failed to establish that their right to use water from the Klamath River entitles them to extract payment for water that they do not use. In short, there is no legal or factual basis for the relief the Klamath Customers seek. The Division of Ratepayer Advocates (DRA) recommends that the Commission:

- deny the Klamath Customers' request for a "rate credit for value plan" and instead continue the Klamath Customers' gradual, four-year transition to tariffed rates provided in Decision (D.) 06-04-034; and
- approve the two separately filed settlements that would resolve all other issues in this case.

## **II. BACKGROUND**

### **A. The Commission Adopted a Transition Rate for Klamath Customers in D.06-04-034.**

PacifiCorp filed its General Rate Case (GRC) Application November 29, 2005, seeking a general rate increase commencing January 1, 2007 and two cost adjustment mechanisms for fuel costs and attrition. The Klamath Customers request a rate credit in this proceeding to determine PacifiCorp's rates. The Klamath Customers are irrigators and users of the Klamath Irrigation Project, a federal reclamation project of more than 200,000 acres located in Oregon and California<sup>1</sup> and established to develop land in the Klamath River basin. PacifiCorp operates seven hydroelectric generating facilities along 65 miles of the Klamath River from the Link River Dam at Upper Klamath Lake to the Iron Gate Dam.<sup>2</sup>

On January 4, 2006, PacifiCorp filed Advice Letter No. 328-E, seeking authority to place Klamath Customers on its current Irrigation Schedule PA-20 tariff rate beginning April 17, 2006. Prior to April 17, 2006, Klamath Customers purchased electricity under

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<sup>1</sup> Ex. 35, p.2:7-9, KWUA/Schoenbeck.

<sup>2</sup> Ex. 23, PPL/1600, p.2, PacifiCorp/Smith.

the terms of a 1956 contract<sup>3</sup> at rates that ranged between \$0.003 and \$0.006 per kilowatt hour (kwh), or nearly 1,300% less than current Schedule PA-20, the rate for agricultural water pumping applicable to customers outside the Klamath Basin. KWUA and the Bureau filed protests to the advice letter that opposed PacifiCorp's plan to move them to Schedule PA-20. Administrative Law Judge (ALJ) Galvin encouraged parties to attempt to resolve the Klamath Customer irrigation issue by settlement. PacifiCorp, KWUA and the Bureau proposed a transition plan that would gradually increase the rates of Klamath Customers to the applicable tariff rate by April 17, 2010.

The Commission set an expedited schedule to consider the proposed transition plan for the Klamath Customers with a goal of reaching a final decision before April 16, 2006, the date of the expiration of the 1956 contract. Decision 06-04-034, issued April 13, 2006, adopted the proposed transition plan in order to mitigate rate shock for the Klamath Customers. The \$7.4 million cost of the transition plan is funded by PacifiCorp's other California ratepayers. The Commission preserved the opportunity for Klamath irrigators to present evidence in support of an alternate tariff classification or rate level as compared to other irrigation customers.

“KWUA and Interior may argue in this proceeding that PacifiCorp's PA-20 tariff is not the appropriate tariff applicable to Klamath Irrigation Project customers and may present proposals for a separate tariff classification. To the extent that KWUA is successful in establishing a separate tariff classification, we may revisit the transition plan being approved in this order to assess the need to modify the transition plan.”<sup>4</sup>

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<sup>3</sup> California Oregon Power Company, or Copco, PacifiCorp's predecessor in interest, executed a contract in 1956 with the Bureau of Reclamation in which Copco agreed to provide electricity to Klamath Customers at prices that were the same or lower as those required by an earlier 1917 contract. In exchange for low cost power, the Bureau dropped its opposition to new hydroelectric projects proposed by PacifiCorp. The Federal Power Agency (FERC's predecessor) required PacifiCorp to provide electricity to Klamath Customers under terms at least as favorable as the 1917 contract as a condition of granting PacifiCorp a hydroelectric license.

<sup>4</sup> Decision 06-04-034, Ordering Paragraph 4.

**B. If Approved, Two Jointly-Proposed Settlements Would Resolve PacifiCorp's Requested Revenue Requirement, as Well as Most Cost Allocation and Rate Design Issues.**

Following the Commission's adoption of the transition rate plan, PacifiCorp served Supplemental Testimony and Exhibits on May 5, 2006, revising its requested revenue requirement from \$11 million to \$12.8 million. DRA served its reports on PacifiCorp's Results of Operations and Results of Examination on June 16, and its report on Marginal Cost, Revenue Allocation and Rate Design on June 23. KWUA, the Bureau and the California Farm Bureau Federation also served testimony relating to revenue allocation and rate design issues.<sup>5</sup> DRA and PacifiCorp served rebuttal testimony on July 14, and KWUA served additional direct testimony on July 24.

DRA and PacifiCorp filed a motion July 7, requesting that the Commission approve a jointly proposed settlement that would resolve all issues related to the revenue requirement and requested attrition mechanisms by reducing PacifiCorp's requested revenue requirement from \$12.8 million to \$7.3 million and making other compromise adjustments.

PacifiCorp, the California Farm Bureau and DRA filed a motion on July 21 requesting that the Commission approve a second jointly proposed settlement that would resolve most issues related to revenue allocation, rate design, service fees and tariff rules.

The two motions requesting approval of the settlements are pending, but no party filed an opposition to either motion. No party voiced objections in response to questions from the ALJ, although KWUA stated that it reserved the right to raise issues about the revenue allocation settlement in its brief.<sup>6</sup>

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<sup>5</sup> These dates were consistent with the March 23, 2006 "Administrative Law Judge Ruling Setting A Hearing Schedule."

<sup>6</sup> KWUA's attorney Mr. Hanschen stated that KWUA would "advise in our brief" whether it had specific concerns with the revenue allocation settlement. 3 Reporter's Transcript (RT) 279:21-23.

**C. The Klamath Customers' Request For a Rate Credit is The Only Remaining Issue.**

Assuming that the Commission approves the two jointly proposed settlements, the sole issue remaining in PacifiCorp's GRC Application is the Klamath Customers' requested rate credit. ALJ Galvin conducted three days of hearings from July 26 through July 28 limited to that issue. DRA filed a "Motion to Strike Portions of the Testimony of the Klamath Water Users Association and the United States Bureau of Reclamation and United States Fish and Wildlife Services" on July 19, on the grounds that it would be unfair to allow KWUA and the Bureau to argue that Klamath Customers provide a system benefit, when they had earlier advocated limiting the cost of the transition rate to PacifiCorp's California customers. The Bureau and KWUA filed replies on July 24 and 25. DRA's motion was denied on July 27.

At the conclusion of hearings, ALJ Galvin revised the dates set for filing briefs to August 28 for opening briefs and September 18 for reply briefs.

**III. DISCUSSION**

**A. Legal Standard**

Section 451 of the Public Utilities Code requires that the Commission approve PacifiCorp's rates only if they are "just and reasonable."<sup>7</sup> PacifiCorp bears the burden of proof that its proposed rates are just and reasonable, and the Commission must consider that it determining whether to adopt the two proposed settlements.

However, the Klamath Customers bear the burden of proof for their request for a rate credit. As the Commission noted in Decision 05-07-010, "the burden of proof, including both the initial burden of going forward and the burden of persuasion by a preponderance of the evidence, is on the party asserting the affirmative of an issue before an administrative agency."<sup>8</sup>

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<sup>7</sup> *See, e.g.* D.04-10-034 Conclusion of Law Number 1.

<sup>8</sup> D.05-07-010, slip opinion. p. 15, 2005 Cal PUC Lexis 294, citing *Administrative Law*, 2 CAL. JUR. 3<sup>d</sup> § 526 (Rev. 1999).



**B. The Klamath Customers Have Not Established the Existence of a Benefit That Justifies a Rate Credit.**

**1. Rate credit request**

The Klamath Customers<sup>9</sup> seek a credit that would amount to as much as \$8.8 million annually (assuming they received the entire amount); the amount would be credited to reduce their effective rates. The KWUA claims that Klamath Customers return an annual average of 261,100 acre-feet of water<sup>10</sup> to the Klamath River, which is then available to PacifiCorp for generating power. KWUA translates this estimate of hydro flow into an estimate of kwh generation, and then values this purported incremental generation using the forward-market price of power at the California-Oregon border

KWUA witness Mr. Schoenbeck testified that it would be a “matter of policy for the Commission to determine” the precise level of the credit.<sup>11</sup> Mr. Schoenbeck stated that an equal sharing the credit between Klamath Customers and PacifiCorp would be “one way of looking at it,” but he did not make a precise recommendation as to the amount of the credit.<sup>12</sup> The rate credit could be based on per kilowatt hour (kwh) use, or paid directly by check to the irrigators.<sup>13</sup>

KWUA’s computation of the rate credit is a three-step process that entailed, first, a hydrological analysis; second, a translation of purported incremental hydro flows into annual generation; and third, a per-kwh valuation of that generation. If any one of these three steps is faulty, the final result is faulty. In fact, the record demonstrates that all three of the steps in KWUA’s analysis are defective; therefore, KWUA’s conclusions are not valid. Moreover, KWUA also confuses water rights with ratemaking principles.

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<sup>9</sup> The Bureau did not recommend a particular rate or credit, but testified that it supported the recommendation of KWUA. 5 RT 758:2-4; 760:26-761:2, Department of Interior/Lesley.

<sup>10</sup> This figure includes the Klamath Basin irrigation customers in both California and Oregon.

<sup>11</sup> Ex. 35, p. 8:18-19, KWUA/Schoenbeck.

<sup>12</sup> 4 RT 576:9-10, KWUA/Schoenbeck.

<sup>13</sup> 4 RT 568:7-15, KWUA/Schoenbeck.

## **2. KWUA's hydrological analysis is defective**

The KWUA claims “three major areas of benefit:” (1) introduction of water from the Lost River Basin to the Klamath River, (2) return of water in excess of Klamath Customer needs, and (3) storage and withdrawal of water in Upper Klamath Lake.<sup>14</sup> The result of these three “benefits,” according to the Klamath Customers, is an annual average of 261,100 acre-feet of water available to PacifiCorp for power generation.<sup>15</sup> KWUA makes no effort to differentiate the respective contributions of these three claimed sources of “benefits” or to actually quantify their individual flows.

While the KWUA methodology for estimating “benefits” rests on a number of flawed assumptions and improper adjustments, their basic methodology is to measure the water flow at a point above the Klamath Project and at a point below the Klamath Project, and attribute any increased flow at the second point to the operations of the Klamath customers. Thus, the Klamath Customers compare the inflow at Upper Klamath Lake to the flow of water at Keno since PacifiCorp’s hydroelectric facilities take water downstream from Keno, and “all of the effect of Klamath Irrigation Project facilities operations are experienced between Upper Klamath Lake and Keno.”<sup>16</sup>

The steps in calculating the amount of water available to PacifiCorp are as follows. The KWUA methodology used historical monthly data between 1949 and 2000. First, the KWUA methodology started with the monthly “net Upper Klamath flow,” values which were calculated by the Bureau of Reclamation and adjusted to account for the change in storage, evaporation and precipitation.<sup>17</sup> Second, the KWUA methodology subtracted estimated Klamath Customer use from the “net Upper Klamath flow” to produce an “adjusted net Upper Klamath flow.” Third, the KWUA methodology compared the “adjusted net Upper Klamath flow” with the observed flow at Keno.

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<sup>14</sup> Ex. 33, p. 2, KWUA/Van Camp.

<sup>15</sup> Ex. 33, pp. 2, 19, KWUA/Van Camp; 4 RT 511:27-512:1, KWUA/Van Camp.

<sup>16</sup> Ex. 33, p. 7, KWUA/Van Camp.

<sup>17</sup> 4 RT 476:19-22, PacifiCorp/Karpack.

In months that the Keno flow was equal to or lower than the adjusted net Upper Klamath flow, the KWUA methodology counted that as a zero. In any month the Keno flow was higher than the net Upper Klamath flow, KWUA characterized that positive difference as a benefit. Finally, the KWUA methodology summed the “monthly benefits” to arrive at an “annual benefit.”

**a) Flaws in the KWUA methodology**

KWUA’s methodology for calculating the amount of water available to PacifiCorp is erroneous in several respects. As discussed below, it deliberately fails to reflect the months in which Klamath Customers’ operations resulted in a lower amount of water available for generation.<sup>18</sup> It distorts the initial baseline by subtracting estimated Klamath Customer use from the point above the Klamath Project. It does not even purport to measure water diverted or returned from the river, but only estimates Klamath Customer use based on estimated water consumption of crops.<sup>19</sup> It uses faulty data to account for contributions to downstream flow that result from flow unrelated to Klamath Customers.

**(1) The KWUA methodology fails to recognize decreases in flow resulting from their activities.**

By counting only “positive flows” at Keno, KWUA fails to capture the true impact of their operations on PacifiCorp. For every month that the flow at Keno was higher than the “adjusted net UKL flow,” Mr. Van Camp’s spreadsheets list those positive amounts. For every month the flow at Keno is lower than the “adjusted net UKL flow,” Mr. Van Camp’s spread sheets list nothing. The result is a number that fails to show the full, actual impact of Klamath Customer’s operations on PacifiCorp.<sup>20</sup>

The following hypothetical illustrates the distorted view that results from the KWUA methodology. If the flow at Keno was 100 units lower than the “adjusted net

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<sup>18</sup> 4RT 515:14--15, KWUA/Van Camp.

<sup>19</sup> 4RT 502:8-12, PacifiCorp/Karpack.

<sup>20</sup> 4RT 522:7 (Van Camp methodology does not show decreases in flow.).

Upper Klamath Lake flow” for seven months of the year, but 10 units higher than the flow at Keno five months of the year, the Klamath Customers methodology would show a “benefit” of 50 acre feet, even though over the course of a year, their activities resulted in a net loss of 650 acre feet. It is not enough to sum only the months in which the flow at Keno was higher than the flow at Upper Klamath Lake. Instead, summing the total of all the differences over the course of a year would be necessary to capture the actual amount of water made available by operations of the Klamath Customers and arrive at a true picture of their impact of PacifiCorp.

KWUA did not calculate how much water was actually available to PacifiCorp using the more complete methodology, but including negative numbers would by definition decrease the purported “benefit.”<sup>21</sup> Thus, the amount of water the Klamath Customers return to the system, by their own admission, is less than the amount that results from their methodology.

PacifiCorp’s witness Mr. Smith pointed out that United States Geological Survey stream flow records for the past water year, which ended September 20, 2005, showed a net loss of water from the river between Link River and Keno Dam of about 30,000 acre-feet. The same USGS stream flow records show that 195,000 acre-feet was diverted from Upper Klamath Lake from A Canal, for a total of 225,000 acre-feet. The USGS data show that the actual impact of Klamath Customers water use is a net loss of water available for generation.<sup>22</sup>

KWUA argues that its one-sided approach is necessary to recognize its senior water rights.<sup>23</sup> This proceeding is not the forum for adjudicating KWUA’s water rights, but even assuming that KWUA has correctly characterized its water rights as compared to PacifiCorp, its argument misses the point. Regardless of whether the Klamath Customers have senior water rights, any proposed rate credit based on a purported benefit

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<sup>21</sup> 4 RT 523:7-8.

<sup>22</sup> Ex. 23, PPL/1600, p. 7, PacifiCorp/Smith.

<sup>23</sup> Ex. 33, p. 9. KWUA/Van Camp.

must accurately recognize the overall impact of their operations on PacifiCorp, not a partial analysis that fails to recognize the many months in which the operations of the Klamath Customers actually decrease the amount of water available to PacifiCorp.

**(2) KWUA uses the wrong baseline.**

The Klamath Customers compare the net inflow at Upper Klamath Lake to the flow at Keno in order to calculate the amount of water available to PacifiCorp as a result of their operations, but they “stack the deck” by subtracting their estimated use from the net Upper Klamath Lake flow. The resulting “baseline” is an artificially low starting point that produces a skewed estimate of the amount of the water available for downstream generation.

For example, if the net inflow at Upper Klamath Lake was 100, and the observed flow at Keno was 100, one might expect that additional water available for downstream generation was zero. Under the KWUA methodology, however, if hypothetical consumptive use of 20 is subtracted from the net inflow at Upper Klamath Lake, comparing net Upper Klamath inflow of 80 to observed flow at Keno of 100 would yield an increased flow of 20, even though in reality, the flow at Keno is the same.

As discussed in Section III B 3 *supra*, adjusting the baseline to reflect the consumptive use of the Klamath Customers rests on the legally incorrect assumption that their senior water right allows them to keep water in excess of what they need for irrigation. Moreover, subtracting out the full consumptive uses, based on estimated crop usage, potentially gives them credit for water they cannot actually divert for reasons including environmental restrictions or their own operational constraints.<sup>24</sup>

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<sup>24</sup> Ex. 23, PPL/1700, pp. 9:19-10:6, PacifiCorp/Karpack.

**(3) The Klamath Customers' methodology incorrectly compensates for the fact they are not the only source of return flows.**

The Klamath River Basin is far larger than the Project, so the Klamath Customers methodology adjusts the observed flow at Keno in an effort to reflect the fact that some of the flow at Keno results from sources other than Project customers. KWUA purported to reflect that by using data collected at Moss Creek, and subtracting that amount from the total return flows.<sup>25</sup> However, as Mr. Karpack testified, there were problems with calibration of data at Moss Creek, and Moss Creek basin showed lowest average flow. Using an average of the five basins yields a flow 2/12 times the size of Moss Creek, which would result in a larger net reduction in flow increase.<sup>26</sup>

**3. The Klamath Customers have no “right” to water they return to the river.**

The Klamath Customers' requested rate credit is premised on their purported right to be paid for water they return to the system, or do not use.<sup>27</sup> According to the Klamath Customers, their rate credit recognizes their “senior rights,” but they admit that there are other rights senior to theirs, and that there is ongoing litigation in Oregon to determine rights of Klamath Basin users.<sup>28</sup>

It is not clear whether the water rights of PacifiCorp's Klamath Customers with farms and facilities in California are governed by Oregon or California law,<sup>29</sup> but in both states, the rights of water users are limited to water that they can beneficially use.

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<sup>25</sup> Ex. 23, PPL/1700, p. 8:3-22, PacifiCorp/Karpack.

<sup>26</sup> 3 RT 424:21-427:28, PacifiCorp/Karpack.

<sup>27</sup> Ex. 33, p. 9, KWUA/Van Camp.

<sup>28</sup> 4 RT 561:3-7, KWUA/Van Camp.

<sup>29</sup> Water for Klamath Customers is diverted in Oregon and returned in Oregon. 4 RT 554:22-555:23, KWUA/Van Camp.

California water law limits.

“[t]he right to water or to the use or flow of water in or from any natural stream or watercourse ...to such water as shall be reasonably required for the beneficial use to be served, and ... does not...extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.<sup>30</sup> Water rights are “usufructuary” and consist not of the actual water but the advantage of its uses.<sup>31</sup>

Similarly, under Oregon water law “[b]eneficial use shall be the basis, measure, and the limit of all rights to the use of water in this state.<sup>32</sup>

Thus, the Klamath Customers’ water rights, regardless of their ultimate determination, do not include the right to waste or keep the water.<sup>33</sup> Their claim that they are entitled to payment for returning excess water to the Klamath River is therefore inconsistent with the laws governing water use in both California and Oregon.<sup>34</sup>

The Commission’s jurisdiction encompasses ratemaking, not adjudication of water rights,<sup>35</sup> but the Commission should take note that the Klamath Customers’ requested rate credit is based on an erroneous interpretation of water law.

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<sup>30</sup> Water Code, Section 100; *see also* California Constitution, Article 10, Section 2, which limits the right to water to the amount that is “reasonably required for the beneficial use to be served.”

<sup>31</sup> *Rank v. Krug*, 90 F. Supp. 773, (DC 1950).

<sup>32</sup> Oregon Revised Statutes Section 540.610.

<sup>33</sup> *See e.g., City of Lodi v. East Bay Municipal Utility District*, 7 Cal. 2d 316 (1936).

<sup>34</sup> Moreover, the rationale of the Klamath Customer’s position would require that other upstream customers receive compensation for “allowing” downstream generators to use water. Although it appears that there may be other holders of water rights, including the Hoopa Tribe (*see* August 14, 2006 letter to ALJ Galvin and Commissioner Brown) and the City of Yreka (5 RT 726:20-728:120, who might also qualify for a “rate credit” as proposed by the Klamath Customers, the Klamath Customers are the only ones making that request in this proceeding.

<sup>35</sup> D.804080, 74 CPUC 193, 214.

**4. KWUA overestimates the power that could be produced, even assuming that 261,100 acre-feet of water was available for generation.**

Even assuming that KWUA accurately calculated the incremental flow provided by Klamath Customers, their methodology for converting the 261,000 acre-feet of water to usable power generation is flawed.

KWUA witness Mr. Schoenbeck started with Mr. Van Camp's estimated 261,100 acre-feet of incremental flow, and then estimated the resulting incremental generation to be 136,441 Mwh.

As DRA Witness Mr. Fest testified, Mr. Schoenbeck's estimates of incremental generation attributable to the Klamath Basin irrigation customers actually exceed the combined Oregon and California sales volumes for these customers.<sup>36</sup> Therefore, Mr. Schoenbeck is, in effect, claiming that the Klamath customers supply more power than they consume. Such an illogical result necessarily renders Mr. Schoenbeck's analysis suspect. A closer look at the KWUA methodology reveals further faults.

KWUA's methodology used an estimated "spill factor" of 22%, to account for the fact that some of the additional water as calculated by Mr. Van Camp could not be used to generate power because of operational constraints, including water in excess of the capacity of generating facilities, as well as maintenance and environmental requirements. But KWUA's 22% spill factor allowance was based on Mr. Van Camp's average monthly data, and therefore did not recognize the significant daily volatility that limits PacifiCorp's ability to use unplanned and unexpected water flows for generation. PacifiCorp's witness Mr. Smith testified that "[t]he value of return flows from the irrigation project is often offset in whole or part by the operational risks and costs associated with managing uncontrolled and unpredictable flows."<sup>37</sup> PacifiCorp's ability to use water for generating electricity is constrained by ramp rate and minimum flow

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<sup>36</sup> Ex. 47, p. 3:17-24, DRA/Fest.

<sup>37</sup> Ex. 23, PPL/1600, pp. 9-11, PacifiCorp/Smith.



requirements, turbine efficiencies and reservoir levels.<sup>38</sup> Mr. Smith testified that, in practice, unanticipated hydro flows not only are not beneficial, but at times may actually interfere with the efficient operation of the hydro plants.<sup>39</sup> KWUA's gross annual estimate of 22% spillage fails to account for these complexities.

When scheduling generation a day ahead, Mr. Smith testified that PacifiCorp balances the system by resource adjustments or making trades in the market to bring the system into balance.<sup>40</sup> If water supplies are different on the actual day generation is needed, the required adjustments may not be cost effective. Thus, even assuming that the estimated 261,100 acre-feet of water is a correct calculation of the incremental flow, KWUA has not shown that such flow actually enables any incremental hydro generation by PacifiCorp.

**5. KWUA's pricing of the purported incremental generation is unsupported and inconsistent with cost-of-service principles.**

Having estimated the incremental generation to be 136,441 Mwh, Mr. Schoenbeck assigned a dollar value to this generation using forward market prices at the California-Oregon border.<sup>41</sup> Specifically, Mr. Schoenbeck claims that the value of the purported incremental generation is 9.4 cents per kwh. This estimated value of generation is absurd, and the Commission should reject it since it has no factual basis.

Mr. Schoenbeck does not explain why incremental generation taking place in PacifiCorp's own hydroelectric plants should be assigned a price that is not based on PacifiCorp's cost of service. The value of 9.4 cents per kwh is unsupported by any credible factual evidence, and exceeds the current average electric rate paid by all PacifiCorp customer classes. Thus, the purported incremental generation value of 9.4 cents per kwh exceeds PacifiCorp's total distribution, transmission, and generation costs

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<sup>38</sup> Ex. 23, PPL/1600, pp.9-10, PacifiCorp/Smith.

<sup>39</sup> Ex. 23, PPL/1600, p. 12, PacifiCorp/Smith.

<sup>40</sup> 3 RT 353:9-20, PacifiCorp/Smith.

<sup>41</sup> Ex. 35, p. 5:2-3, KWUA/Schoenbeck.

of serving customers. Moreover, Mr. Schoenbeck's valuation of the purported incremental generation bears no relation to the irrigation-class cost of service calculated in the allocation and rate design portion of this case.

Based on the proposed settlements on revenue requirement and rate design, the total power-supply cost (generation plus ECAC) of the PA-20 rate will be 4.359 cents per kwh.<sup>42</sup> Therefore, if the Klamath Basin customers were to immediately begin paying the full PA-20 rate (instead of the lower transition rate), their allocated share of generation costs would be 4.359 cents per kwh. Yet Mr. Schoenbeck claims the Klamath customers' activities "create" generation that is worth 9.4 cents per kwh to PacifiCorp. It defies logic that one customer class costs 4.359 cents/kwh to serve, yet the same customers somehow "create" power that is worth 9.4 cents/kwh.

**C. Providing Water to the Lower Klamath National Wildlife Refuge is not a benefit that PacifiCorp's other ratepayers should subsidize.**

The Klamath Customers argue that returning water to the Lower Klamath Wildlife Refuge serves a public purpose and is an additional factor that the Commission should consider in deciding whether to grant a rate credit.<sup>43</sup> Yet KWUA and the Bureau presented no evidence about special benefits that PacifiCorp's California ratepayers, as opposed to other California residents or out-of-state visitors, enjoy from the Lower Klamath Wildlife Refuge. Many of PacifiCorp's California ratepayers have a substantially lower median income than other California residents,<sup>44</sup> and it would be unreasonable to require them to subsidize hunting, photography and wildlife observation opportunities for the world at large.<sup>45</sup> While the Commission's General Order 96A authorizes public utilities to furnish reduced rates to governmental entities such as the

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<sup>42</sup> Joint Motion of the Settling Parties, filed July 21, 2006, Exhibit 3, p. 52. The generation component is 2.791 cents and the ECAC component is 1.568 cents, for a total of 4.359 cents.

<sup>43</sup> Ex. 35, p. 8:6-12, KWUA/Schoenbeck; 5 RT 640:16-20, KWUA/Schoenbeck.

<sup>44</sup> Ex. 7, pp. 6:20-7:4, Siskiyou County/Armstrong (testifying about the income level of Siskiyou County residents).

<sup>45</sup> Ex. 42, p. 14, United States Department of Wildlife/Mausser.

Bureau, the record in this proceeding does not support the request for a rate credit to the Bureau.

**D. The Klamath Customers provided no evidence that PacifiCorp’s cost to serve them is lower than the cost of serving other irrigation or pumping customers.**

The Klamath Customers, in proposing the transition rate plan, reserved their right to propose a tariff different than schedule PA-20, the tariff under which PacifiCorp serves other agricultural and pumping customers.<sup>46</sup> However, Klamath Customers presented no evidence that PacifiCorp’s cost to serve them was less than its costs of serving other customers. In fact, the record shows that Klamath Customers exhibit usage patterns similar to those of other irrigators outside the Klamath Irrigation Project, and are distinguishable only by their location and the fact that they have enjoyed extremely low electric prices since 1917.<sup>47</sup> The Oregon PUC rejected the “different characteristics” line of argument,<sup>48</sup> and KWUA has apparently abandoned it.

Nor did the Klamath Customers point to where in PacifiCorp’s revenue requirement their purported “benefit” is included. If in fact their “benefit” exists, it should be identified within the revenue requirement, yet KWUA provided no evidence identifying the revenue requirement associated with the benefit, and how its estimate of the benefits and value correlates to figures in the Results of Operations model.

**E. The Klamath Customers’ requested rate credit for returning water to the river is unprecedented.**

The Klamath Customers cannot point to a single case in which a rate credit such as they request was adopted.<sup>49</sup> The Oregon Public Utilities Commission considered a

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<sup>46</sup> D.06-04-034, Appendix A, p. 2: “The KWUA and DOI may, in the context of this GRC, argue that rate schedule PA-20 is not appropriate and present proposals for creation of a separate tariff for application to Project Customers and may, in that process, present evidence and argument regarding the cost of such service and benefits provided by Project Customers.”

<sup>47</sup> Ex.6, pp. 3-5 and Attachment WRG 1, PacifiCorp/Griffith.

<sup>48</sup> Order No. 06-172, p. 11 (April 12, 2006).

<sup>49</sup> The Oregon Public Utilities Commission found that “the concept of providing rate credits to upstream water users is unprecedented...” Oregon Public Utilities Commission Order Number 06-172, p. 15.

similar request for a rate credit, receiving testimony from many of the same witnesses that have testified in the present case. The Oregon Commission declined to grant the request, saying the evidence before it was insufficient to show the existence of a quantifiable benefit. While the Oregon Commission left the door open for future consideration of a rate credit, it set a very high standard of proof for granting such a credit:

“First.... benefits must be quantified on a prospective basis. In other words, for a rate credit to be justified, the Commission must find that the provision of discounted electric rates to the Klamath Basin irrigators will continue to provide value to all of PacifiCorp’s customers. That is, evidence must demonstrate that the amount of operational benefits to PacifiCorp’s system exceeds that which would occur if Klamath Basin irrigators were charged standard tariff rates.”

“Second, any analysis of benefits must consider all factors that impact the Klamath River stream flow, including the irrigators’ use of water for irrigation.... No net benefit can be found if the net result of the irrigators’ use of discounted electricity actually depletes stream flow and reduces generation capability.”

“Finally, the mere presence of increased return flows does not, in and of itself, establish a quantifiable benefit. Any analysis must also establish that the augmented flows can actually be used to generate electricity, and provide a reasonable valuation of that electricity. Increased flows that occur during high run-off periods have little or no hydroelectric generation value.”<sup>50</sup>

If the Commission is inclined to further consider this issue, it can monitor proceedings at the Oregon Public Utilities Commission and obtain the benefit of their additional analysis. Ultimately, however, the Commission must make its own decision,

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<sup>50</sup> Oregon Public Utilities Commission Order No. 06-172, pp. 16-17.

just as it did in 1956 when it rejected the request of off-Project water users for a lower rate, even though Oregon granted it.<sup>51</sup>

**F. If the Commission decides there is a benefit, it should cap the responsibility of California ratepayers at five percent.**

It appears unlikely that PacifiCorp could require other states to pay for the proposed rate credit.<sup>52</sup> Oregon, the only state that has examined this issue, declined to adopt a rate credit based on the evidence before it.<sup>53</sup> Instead, the likely outcome of the adoption of any rate credit is that such a “benefit” would not be recognized by other states.<sup>54</sup>

However, the claimed incremental hydro generation is claimed to be a systemwide benefit to PacifiCorp, not a benefit limited to California customers. Therefore, if the Commission does adopt the rate credit requested by the Klamath Customers, it should limit the cost responsibility of California customers to California’s share of other hydroelectric costs under PacifiCorp’s Inter-Jurisdictional Cost Allocation Protocol, also known as the Revised Protocol, which is about 4%.<sup>55</sup>

#### **IV. CONCLUSION**

The Commission should deny the unprecedented and unsupported request of the Klamath Customers for a rate credit for returning water to the Klamath River. Instead, the Commission should, consistent with D.06-04-034 (1) continue the Klamath Customers’ phased transition to cost-based rates, similar those paid by PacifiCorp’s other California customers, and (2) approve the two currently pending settlements that will resolve all other issues in PacifiCorp’s GRC.

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<sup>51</sup> D.53659, 55 Opinions and Orders of the CPUC 168, 172.

<sup>52</sup> 5 RT 674:6-16, PacifiCorp/Griffith; Ex. 18, PPL/1100, pp. 11:15-14:17.

<sup>53</sup> Oregon Public Utilities Commission Order No. 06-172.

<sup>54</sup> 5 RT 674:6-16, PacifiCorp/Griffith.

<sup>55</sup> 5 RT 780:22-781:15, DRA/Fest; Ex. 18, PPL/1100, p .8:13-23, PacifiCorp/Taylor.

Respectfully submitted,

/s/ DIANA L. LEE

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August 28, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “**OPENING BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES ON THE RATE CREDIT REQUEST IN PACIFICORP’S GENERAL RATE CASE OF THE KLAMATH WATER USERS ASSOCIATION AND THE UNITED STATES BUREAU OF RECLAMATION AND UNITED STATES FISH AND WILDLIFE SERVICES**” in **A.05-11-022, et al.**, by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on August 28, 2006 at San Francisco, California.

/s/ CHARLENE D. LUNDY

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Charlene D. Lundy

**N O T I C E**

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